

AMENDED IN ASSEMBLY JANUARY 4, 2010

AMENDED IN ASSEMBLY APRIL 14, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 229

Introduced by Assembly Member Charles Calderon

February 5, 2009

~~An act to amend Section 6396 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy. An act to amend Section 16361 of the Probate Code, relating to the Uniform Principal and Income Act.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 229, as amended, Charles Calderon. ~~Sales tax: property shipped outside the state.~~ *Uniform Principal and Income Act: trust administration: income and payments.*

Existing law, the Uniform Principal and Income Act, requires a trust to be administered with due regard to the respective interests of defined income beneficiaries and remainder beneficiaries. The act requires that a tax required to be paid by a trustee based on receipts allocated to income be paid from income. The act requires the trustee, in order to obtain an estate tax marital deduction for a trust, to allocate a prescribed amount of a payment to income, in accordance with certain requirements. The act further requires the trustee of a trust that qualifies for, or has elected to qualify for, the marital tax deduction, where the separate fund payer provides documentation reflecting the internal income of the separate fund to the trustee, to allocate the internal income of each separate fund for the accounting period as if the separate fund

were a trust subject to the act, as provided, and to allocate the balance to the principal.

The act provides that, if the separate fund payer does not provide documentation reflecting the internal income of the separate fund to the trustee, but the trustee can determine the value of the separate fund, the internal income of the separate fund is deemed to equal 4% of the fund's value, according to the most recent statement of value preceding the beginning of the accounting period. The act further provides that, in other instances where the separate fund payer does not provide documentation reflecting the internal income of the separate fund to the trustee, the internal income of the fund is deemed to equal the product of the interest rate and the present value of the expected future payments, as determined under a specified federal tax law.

This bill would clarify that this latter provision applies where the separate fund payer does not provide documentation reflecting the internal income of the separate fund to the trustee and the trustee cannot determine the value of the separate fund.

~~The Sales and Use Tax Law imposes a sales tax on a retailer measured by the gross receipts from the retail sale in this state of tangible personal property and a use tax on the storage, use, or other consumption of tangible personal property in this state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state. That law provides various exemptions from those taxes, including an exemption from sales tax for a sale of tangible personal property in this state, when the contract of sale requires that property to be shipped, and it is shipped, in a specified manner, to a point outside the state.~~

~~Counties and cities are authorized to impose local sales and use taxes in conformity with the Sales and Use Tax Law, and districts are authorized to impose transactions and use taxes in conformity with the Sales and Use Tax Law. Amendments to the Sales and Use Tax Law are incorporated into these taxes.~~

~~This bill would limit the exemption from sales tax, when the contract of sale requires that the tangible personal property to be shipped, and it is shipped, to another state, to any amount in excess of the rate of the state sales tax imposed by the state of destination.~~

~~This bill would take effect immediately as a tax levy.~~

Vote: $\frac{2}{3}$ -majority. Appropriation: no. Fiscal committee: *yes-no*. State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 16361 of the Probate Code is amended*
2 *to read:*

3 16361. (a) For purposes of this section, the following terms
4 have the following meanings:

5 (1) “Payment” means a payment that a trustee may receive over
6 a fixed number of years or during the life of an individual because
7 of services rendered or property transferred to the payer in
8 exchange for future payments. The term also includes a payment
9 made in money or property from the payer’s general assets or from
10 a separate fund created by the payer. For purposes of subdivisions
11 (d), (e), (f), and (g), “payment” also includes any payment from a
12 separate fund, regardless of the reason for the payment.

13 (2) “Separate fund” includes a private or commercial annuity,
14 an individual retirement account, and a pension, profit-sharing,
15 stock bonus, or stock ownership plan.

16 (b) To the extent that any portion of the payment is characterized
17 by the payer as interest, a dividend, or a payment made in lieu of
18 interest or a dividend, a trustee shall allocate that portion of the
19 payment to income. The trustee shall allocate to principal the
20 balance of the payment.

21 (c) If no part of a payment is characterized as interest, a
22 dividend, or an equivalent payment, and all or part of the payment
23 is required to be made, a trustee shall allocate to income 10 percent
24 of the part that is required to be made during the accounting period
25 and the balance to principal. If no part of a payment is required to
26 be made or the payment received is the entire amount to which the
27 trustee is entitled, the trustee shall allocate the entire payment to
28 principal. For purposes of this subdivision, a payment is not
29 “required to be made” to the extent that it is made because the
30 trustee exercises a right of withdrawal.

31 (d) Subdivisions (f) and (g) shall apply, except as provided in
32 subdivision (e), and subdivisions (b) and (c) shall not apply, in
33 determining the allocation of a payment made from a separate fund
34 to either of the following:

35 (1) A trust to which an election to qualify for a marital deduction
36 is made under Section 2056(b)(7) of the Internal Revenue Code.

37 (2) A trust that qualifies for the marital deduction under Section
38 2056(b)(5) of the Internal Revenue Code.

(e) Subdivisions (d), (f), and (g) shall not apply if the series of payments would, without the application of subdivision (d), qualify for the marital deduction under Section 2056(b)(7)(C) of the Internal Revenue Code.

(f) If the separate fund payer provides documentation reflecting the internal income of the separate fund to the trustee, the trustee shall allocate the internal income of each separate fund for the accounting period as if the separate fund were a trust subject to this act. Upon request of the surviving spouse, the trustee shall require that the person administering the separate fund distribute this internal income to the trust. The trustee shall allocate a payment from the separate fund to income to the extent of the internal income of the separate fund and distribute that amount to the surviving spouse. The trustee shall allocate the balance to principal. Upon request of the surviving spouse, the trustee shall allocate principal to income to the extent the internal income of the separate fund exceeds payments made from the separate fund to the trust during the accounting period.

(g) If the separate fund payer does not provide documentation reflecting the internal income of the separate fund to the trustee, but the trustee can determine the value of the separate fund, the internal income of the separate fund is deemed to equal 4 percent of the fund's value, according to the most recent statement of value preceding the beginning of the accounting period. If the separate fund payer does not provide documentation reflecting the internal income of the separate fund to the trustee *and the trustee cannot determine the value of the separate fund*, the internal income of the fund is deemed to equal the product of the interest rate and the present value of the expected future payments, as determined under Section 7520 of the Internal Revenue Code for the month preceding the accounting period for which the computation is made.

(h) This section does not apply to a payment to which Section 16362 applies.

~~SECTION 1. Section 6396 of the Revenue and Taxation Code is amended to read:~~

~~6396. (a) There are exempted from the computation of the amount of the sales tax the gross receipts from the sale of tangible personal property which, pursuant to the contract of sale, is required to be shipped and is shipped to a point in a foreign country by the retailer by means of: (1) facilities operated by the retailer, or~~

1 ~~(2) delivery by the retailer to a carrier, customs broker, or~~
2 ~~forwarding agent, whether hired by the purchaser or not, for~~
3 ~~shipment to the foreign point.~~

4 ~~(b) There are exempted from the computation of the amount of~~
5 ~~the sales tax any amount that is in excess of the rate of the state~~
6 ~~sales tax imposed by the state of destination for the gross receipts~~
7 ~~from the sale of tangible personal property which, pursuant to the~~
8 ~~contract of sale, is required to be shipped and is shipped to a point~~
9 ~~outside this state and in another state by the retailer by means of:~~

10 ~~(1) facilities operated by the retailer, or (2) delivery by the retailer~~
11 ~~to a carrier, customs broker, or forwarding agent, whether hired~~
12 ~~by the purchaser or not, for shipment to such out-of-state point.~~

13 ~~(c) For purposes of this section, the term "carrier" shall mean~~
14 ~~a person or firm engaged in the business of transporting for~~
15 ~~compensation tangible personal property owned by other persons,~~
16 ~~and includes both common and contract carriers. The term~~
17 ~~"forwarding agent" shall mean a person or firm engaged in the~~
18 ~~business of preparing property for shipment or arranging for its~~
19 ~~shipment.~~

20 ~~SEC. 2.—This act provides for a tax levy within the meaning of~~
21 ~~Article IV of the Constitution and shall go into immediate effect.~~